IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO. 881 OF 2007

Mohammed Ishaque Mohammed .....Petitioner.

V/s

Bhiwandi Nizampura City
Municipal Corporation & anr. .....Respondents.

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Mr. A.R. Patil for the Petitioner.

Mr. Nitin Jamdar for Respondent No.1.

Mr. B.G. Tangsali for Respondent No.2.

CORAM: A. S. OKA, J.

DATE : 15th February, 2007

P.C:

1. Heard the learned Advocates appearing for the parties.

2. The Petitioner is the original plaintiff. Both the Courts below have declined to grant discretionary relief of temporary injunction in favour of the Petitioner.

3. Both the Courts below have considered the fact that on 06/10/2002, a structure admeasuring 125 ft x 10.6 inches was demolished by 1st Respondent for the purpose of road widening and there is no specific plea in the plaint that the Petitioner was having a larger structure on the property in

dispute. There is nothing on record to show that the construction in respect of which relief of injunction is claimed was lawfully made after obtaining permission of the competent authority. Moreover, there is an interim order operating in favour of the 2nd Respondent by which the Petitioner has been directed to maintain status-quo in respect of the suit property. The Courts below have considered the photographs produced on record by the 2nd Respondent, which show that the Petitioner has carried out a new construction.

4. The relief of temporary injunction is always a discretionary and equitable relief. From the facts which are disclosed in both the orders, it is obvious that that there is no equity in favour of the Petitioner. No case is made out for interference with the impugned order in a Writ Petition under Article 227 of the Constitution of India. Petition is rejected.

(A.S. OKA, J.)